Part One
Introduction
Chapter 2
Equal Opportunity and the Law

Lecture Outline:

Equal Opportunity Laws Enacted From 1964 to 1991
- Title VII of the 1964 Civil Rights Act
- Executive Orders
- Equal Pay Act of 1963
- Age Discrimination in Employment Act of 1967
- Vocational Rehabilitation Act of 1973
- Pregnancy Discrimination Act of 1978
- Federal Agency Guidelines
- Early Court Decisions Regarding Equal Employment Opportunity

The Laws Enacted from 1991 to the Present
- The Civil Rights Act of 1991
- The Americans with Disabilities Act
- Uniformed Services Employment and Reemployment Rights Act
- Genetic Information Nondiscrimination Act of 2008 (GINA)
- State and Local Equal Employment Opportunity Laws
- Summary and Religious Discrimination
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Defenses Against Discrimination Allegations
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- Voluntary Mediation
- Mandatory Arbitration of Discrimination Claims
- Improving Performance: *HR Tools for Line Managers and Small Businesses*

Diversity Management
- Potential Threats to Diversity
- Improving Performance: *HR as a Profit Center*
- Managing Diversity
- Implementing the Affirmative Action Program
- Reverse Discrimination

Chapter Review

Where Are We Now…

The purpose of this chapter is to provide you with the knowledge to deal effectively with equal employment questions on the job. The main topics we cover are equal opportunity laws enacted from 1964 to 1991, the laws enacted from 1991 to the present, defenses against discrimination allegations, illustrative discriminatory employment practices, the EEOC enforcement process, and diversity management.

Interesting Issues:

Lawyers recently filed a federal lawsuit against Uber Technologies. They said Uber's questionable performance appraisal system produced performance ratings that led to male Uber employees getting better raises than women. We will see how to avoid such problems.

Learning Objectives:

2-1. List the basic features of Title VII of the 1964 Civil Rights Act and at least five other early equal employment laws.
2-2. List the basic features of at least five post-1990 employment laws, and explain with examples how to avoid accusations of sexual harassment at work.
2-3. Illustrate two defenses you can use in the event of discriminatory practice allegations, and list specific discriminatory personnel management practices in recruitment, selection, promotion, transfer, layoffs, and benefits.
2-4. List the steps in the EEOC enforcement process.
2-5. Give examples of attitudes that undermine diversity efforts, and explain how you would create a diversity management program

Annotated Outline:

I. Equal Opportunity Laws Enacted from 1964 – 1991
The Fifth Amendment to the U.S. Constitution (ratified in 1791) states that, "no person shall be deprived of life, liberty, or property, without due process of the law." The Thirteenth Amendment (1865) outlawed slavery, and courts have held that it bars racial discrimination. The Civil Rights Act of 1866 gives all persons the same right to make and enforce contracts and to benefit from U.S. laws.
A. Title VII of the 1964 Civil Rights Act – was one of the first of these laws. Title VII bars discrimination on the part of most employers, including all public or private employers of 15 or more persons and most labor unions. Title VII also established the Equal Employment Opportunity Commission (EEOC) to administer and enforce the Civil Rights Act at work. The EEOC consists of five members appointed by the president with the advice and consent of the Senate.
1. The act says it is unlawful to fail or refuse to hire or to discharge an individual or otherwise discriminate against any individual with respect to

his/her compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

2. The act says it is unlawful to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his/her status as an employee, because of such individual's race, color, religion, sex, or national origin.

B. Executive Orders – various presidents have signed executive orders expanding equal employment laws in federal agencies. The Office of Federal Contract Compliance Programs was established to implement orders and ensure compliance.

C. Equal Pay Act of 1963 – the Equal Pay Act of 1963 (amended in 1972) made it unlawful to discriminate in pay on the basis of sex when jobs involve equal work, equivalent skills, effort, and responsibility, and are performed under similar working conditions.

D. Age Discrimination in Employment Act of 1967 – the Age Discrimination in Employment Act of 1967 (ADEA) made it unlawful to discriminate against employees or applicants for employment who are between 40 and 65 years of age. Subsequent amendments effectively ended most mandatory retirement at age 65.

E. Vocational Rehabilitation Act of 1973 – the Vocational Rehabilitation Act of 1973 requires employers with federal contracts over $2500 to take affirmative action for the employment of handicapped persons.

F. Pregnancy Discrimination Act of 1978 – prohibits using pregnancy, childbirth, or related medical conditions to discriminate in hiring, promotion, suspension, or discharge, or in any term or condition of employment.

G. Federal Agency Guidelines – the EEOC, Civil Service Commission, Department of Labor, and Department of Justice together set forth "highly recommended" employer procedures regarding matters like employee selection, record keeping, pre-employment inquiries, and affirmative action programs.

H. Early Court Decisions Regarding Equal Employment Opportunity

1. Griggs v. Duke Power Company was a case heard by the Supreme Court in which the plaintiff argued that his employer's requirement that coal handlers be high school graduates was unfairly discriminatory. In finding for the plaintiff, the Court ruled that discrimination need not be overt to be illegal, that employment practices must be related to job performance, and that the burden of proof is on the employer to show that hiring standards are job related if they have an unequal impact on members of a protected class.
2. Albemarle Paper Company v. Moody was a Supreme Court case in which it was ruled that the validity of job tests must be documented, and that employee performance standards must be unambiguous.

II. The Laws Enacted from 1991 to the Present

A. The Civil Rights Act of 1991 (CRA 1991) – was signed into law to roll back equal employment law to where it stood before the 1980s. It also permits compensatory and punitive damages.

1. Burden of Proof – what the plaintiff must show to establish possible illegal discrimination, and what the employer must show to defend its actions.

2. Money Damages – CRA 1991 provides that an employee who is claiming intentional discrimination (disparate treatment) can ask for 1) compensatory damages and 2) punitive damages, if it can be shown the employer engaged in discrimination "with malice or reckless indifference to the federally protected rights of an aggrieved individual."
3. Mixed Motives – under CRA 1991, an employer cannot avoid liability by proving they would have taken the same action—such as terminating someone—even without the discriminatory motive.

B. The Americans with Disabilities Act
1. The American with Disabilities Act (ADA) of 1990 – prohibits discrimination against qualified disabled individual with disabilities, with regard to applications, hiring, discharge, compensation, advancement, training, or other terms, conditions, or privileges of employment. ADA also says employers must make "reasonable accommodations" for physical or mental limitations unless doing so imposes an "undue hardship" on the business.
2. Qualified Individual – the ADA prohibits discrimination against those who, with or without a reasonable accommodation, can carry out the essential functions of the job. The individual must have the requisite skills, educational background, and experience. A job function is essential when, for instance, it is the reason the position exists or it is so highly specialized that the employer hires the person for his or her expertise or ability to perform that particular function.
3. Reasonable Accommodation – if the individual cannot perform the job as currently structured, the employer is required to make a "reasonable accommodation," unless doing so would present an "undue hardship."
4. The ADA Amendments Act of 2008 (ADAAA) **–** employers traditionally prevailed in almost all—96%—federal circuit court ADA decisions.
5. The "New" ADA – in 2008, amendments were made to the ADA. These changes will make it easier for employees to show their disabilities are limiting.

C. Uniformed Service Employment and Reemployment Rights Act – employers are generally required, among other things, to reinstate employees returning from military leave to positions comparable to those they had before leaving.

D. Genetic Information Nondiscrimination Act of 2008 (GINA) – the law prohibits discrimination by health insurers and employers based on people's genetic information. Specifically, it prohibits the intentional acquisition of genetic information about applicants and employees, and imposes strict confidentiality requirements.

E. State and Local Equal Employment Opportunity Laws – usually cover employers (like those with less than 15 employees) not covered by federal legislation. State and local equal employment opportunity agencies (often called *Human Resources Commission* or *Fair Employment Commissions*) also pay a role in equal employment compliance.

F. In Summary: Religious and Other Types of Discrimination – religious discrimination involves treating someone unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional organized religions such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical, or moral beliefs.

G. Recent Trends in Discrimination Law
H. Sexual Harassment – under EEOC guidelines, employers have an affirmative duty to maintain workplaces free of sexual harassment and intimidation.
   1. What is sexual harassment? EEOC guidelines define sexual harassment as unwelcome sexual advances, requests for sexual favors, and any other verbal or physical conduct of a sexual nature that takes place under any of the following conditions:
      a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
      b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual.
      c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.
   2. Proving Sexual Harassment – there are 3 main ways someone can prove sexual harassment.
      a. Quid Pro Quo – proves that rejecting a supervisor's advances adversely affected what the EEOC calls a "tangible employment action," such as hiring, firing, promotion, demotion, and/or work assignment.
      b. Hostile Environment Created by Supervisors – shows that even though there were no direct threats or promises in exchange for sexual advances, advances interfered with performance and created an offensive work environment.
      c. Hostile Environment Created by Coworkers or Non-employees – an employer is liable for the sexually harassing acts of its employees and in some cases, customers, if the employer knew or should have known of the harassing conduct.
   3. When is the Environment "Hostile"? – generally means when the intimidation, insults, and ridicule were sufficiently severe to alter the employee's working conditions.
   4. Supreme Court Decisions – the case called *Meritor Savings Bank, FSB v. Vinson* to endorse broadly the EEOC's guidelines on sexual harassment. Two other Supreme Court decisions further clarified sexual harassment law.
      a. *Burlington Industries v. Ellerth* – the employee accused her supervisor of quid pro quo harassment.
      b. *Faragher v. City of Boca Raton* – the employee accused the employer of condoning a hostile work environment.
   6. Implications for Employers and Managers
      When The Law Isn't Enough – three practical considerations often trump the legal requirements. First, "Women perceive a broader range of soci-sexual behaviors (touching, for instance) as harassing. A second problem is that victims are often fearful. A third problem is that employees often won't complain."
   7. What The Employee Can Do – first, complain. In that context, steps an employee can take include:

a. File a verbal contemporaneous complaint with the harasser and the harasser's boss, stating that the unwanted overtures should cease because the conduct is unwelcome.
b. If the unwelcome conduct does not cease, file verbal and written reports regarding the unwelcome conduct and unsuccessful efforts to get it to stop with the harasser's manager and/or the human resource director.
c. If the letters and appeals to the employer do not suffice, contact the local office of the EEOC to file the necessary claim. In very serious cases, the employee can also consult an attorney about suing the harasser for assault and battery, intentional infliction of emotional distress, injunctive relief, and to recover compensatory and punitive damages.

8. Trends Shaping HR: *Digital and Social Media* Some employees will use Facebook and other accounts to harass and bully coworkers. Of course, social media has also been a boon for staffing, for finding candidates on LinkedIn. However, viewing an applicant's social media profile can be problematic, as it may reveal information on things like religion, race, and sexual orientation.

III. Defenses Against Discrimination Allegations – discrimination laws that distinguish between disparate treatment and disparate impact. Disparate treatment means intentional discrimination. Disparate impact means that "an employer engages in an employment practice or policy that has a greater adverse impact (effect) on the members of a protected group under Title VII than on other employees regardless of intent."

A. The Central Role of Adverse Impact – an applicant or employee can use one of the following five methods to show that one of an employer's procedures (such as a selection test) has an adverse impact on a protected group:

1. Disparate Rejection Rates – this method compares the rejection rates for a minority group and another group (usually the remaining non-minority applicants). Federal agencies use a "4/5ths rule" to assess disparate rejection rates.
2. The Standard Deviation Rule – is a statistically measure of variability. It is a measure of the dispersion of a set of data from its mean.
3. Restricted Policy – is an approach that means demonstrating that the employer's policy intentionally or unintentionally excluded members of a protected group.
4. Population Comparisons – is an approach that compares 1) the percentage of the protected group and white workers in the organization with 2) the percentage of the corresponding groups in the labor market, where the labor market is usually defined as the U.S. Census data for the Standard Metropolitan Statistical Area.
5. McDonnell-Douglas Test – when an applicant is qualified but rejected, and the employer continues seeking applicants, the Court has determined that a *prima facie* case of disparate treatment has been established under these conditions. The U.S. Supreme Court set four rules for applying the McDonnell-Douglas test:
    a. the person belongs to a protected class;
    b. that he or she applied and was qualified for the job for which the employer was seeking applicants;

c. that despite the qualification, the person was rejected; and
d. that after his or her rejection, the position remained open and the employer continued to seek applications from persons with the individual complainant's qualifications.

6. Adverse Impact Example

B. Bona Fide Occupational Qualification (BFOQ) is usually a defense to a disparate treatment case based upon direct evidence of intentional discrimination, rather than to disparate impact (unintentional) cases.
   1. Age as a BFOQ – ADEA does permit disparate treatment in those instances when age is a BFOQ.
   2. Religion as a BFOQ is justified in the case of religious organizations or societies that require employees to share their particular religion.
   3. Gender as a BFOQ is allowed for positions requiring specific physical characteristics necessarily possessed by one sex.
   4. National Origin as a BFOQ – a person's national origin may be a BFOQ.

C. Business Necessity – business necessity is a defense created by the courts that requires an employer to show an overriding business purpose for the discriminatory practice and that the practice is therefore acceptable.

D. Know Your Employment Law
   1. Examples of What You Can and Cannot Do
   2. Recruitment
      a. Word of Mouth – you cannot rely upon word-of-mouth dissemination of information about job opportunities when your workforce is all white or all members of some other class.
      b. Misleading Information – it is unlawful to give false or misleading information to members of any group.
      c. Help Wanted Ads – help wanted 'male' or help wanted 'female' ads are violations unless gender is a bona fide occupational qualification for the job.
   3. Selection Standards
      a. Educational Requirements – courts have found education qualifications to be illegal when minority groups are less likely to possess the education qualifications or qualifications are not job related.
      b. Tests – courts deem tests unlawful if they disproportionately screen out minorities or women and they are not job related.
      c. Preference to Relatives – do not give preference to relatives of current employees with respect to employment opportunities.
      d. Height, Weight, and Physical Characteristics – physical requirements such as minimum height are unlawful unless the employee can show they are job related.
      e. Arrest Records – unless a job requires security clearance, do not ask an applicant whether he or she has been arrested or spent time in jail or use an arrest record to disqualify a person automatically.
      f. Application Forms – employment applications generally shouldn't contain questions about applicant's disabilities, workers' compensation history, age, arrest record, or U.S. citizenship.

g. Discharge Due to Garnishment – firing a minority member whose salary is garnished is illegal unless you can show some overriding business necessity.

4. Sample Discriminatory Promotion, Transfer, & Layoff Practices
   a. Personal Appearance Regulations and Title VII – employees sometimes file suits against employers' dress and appearance codes under Title VII. They usually claim sexual discrimination, but sometimes claim racial or even religious discrimination. The chapter describes court rulings regarding dress, hair, uniforms, tattoos, and body piercings.
5. Three other things:
   a. *Good intentions are no excuse.*
   b. One cannot claim that a *union agreement necessitates some discriminatory practice*.
   c. A strong defense *is not your only recourse.*

IV. The EEOC Enforcement Process – even careful employers eventually face employment discrimination claims and have to deal with the EEOC.

1. File Charge – the process begins when someone files a claim with the EEOC.
2. Charge Acceptance – the EEOC's common practice is to accept a charge and orally refer it to the state or local agency on behalf of the charging party.
3. Serve Notice – the EEOC has 10 days to serve notice on the employer.
4. Investigation/Fact-Finding Conference – the EEOC has 120 days to decide whether there is reasonable cause to believe the charge. Early in the investigation, the EEOC holds a fact-finding conference to find weak spots in each party's position. It uses these to push for a settlement.
5. Cause/No Cause – if no reasonable cause is found, the EEOC must dismiss the charge. A Notice of Right to Sue is issued to the charging party who then has 90 days to file a suit on his or her own behalf.
6. Conciliation – if cause is found, the EEOC has 30 days to work out a conciliation agreement.
7. Notice to Sue – if conciliation is not satisfactory, the EEOC may bring a civil suit in federal district court, or issue a Notice of Right to Sue to the person who filed the charge.

A. Voluntary Mediation – the EEOC refers about 10% of its charges to voluntary mediation mechanism, an informal process in which a neutral third party assists the opposing parties to reach a voluntary negotiated resolution of a charge of discrimination.

B. Mandatory Arbitration of Discrimination Claims – many employers, to avoid EEO litigation, require applicants and employees to agree to arbitrate such claims. The EEO does not favor mandatory arbitration. However, the U.S. Supreme Court's decisions make it clear that employment discrimination plaintiffs may be compelled to arbitrate their claims under some circumstances.

C. Improving Performance: *HR Tools for Line Managers and Small Businesses*

V. Diversity Management
   A. Potential Threats to Diversity – workforce diversity produces both benefits and problems for employers. Unmanaged, it can produce big behavioral behaviors that reduce cooperation. Potential problems include: stereotyping, discrimination, tokenism, and ethnocentrism.
   B. Improving Performance: *HR as a Profit Center* Diversity can drive higher profits.
   C. Managing Diversity – managing diversity means maximizing diversity's potential benefits while minimizing the potential problems. The employer may institute a *diversity management program*, usually at the initiative of a top executive. Activities that constitute managing diversity include:
      1. Providing strong leadership – companies with exemplary reputations in managing diversity typically have CEOs who champion the cause of diversity.
      2. Assess the situation – assessing a company's diversity includes equal employment hiring and retention metrics, employee attitude surveys, management employee evaluations, and focus groups.
      3. Change culture and management systems.
      4. Evaluate the diversity management program.
   D. Diversity through engagement – Some design diversity efforts to elicit their employees' engagement and active participation.E. Implementing the Affirmative Action Program – affirmative action is still a significant workplace issue today. Affirmative action means taking action in recruitment, hiring, promotion, and compensation to eliminate the current effects of past discrimination. A good-faith effort strategy emphasizes identifying and eliminating the obstacles to hiring and promoting women and minorities, and increasing the minority or female applicant flow.
      1. Employee resistance – avoiding employee resistance to affirmative action programs is important to show that the program doesn't involve preferential selection standards by providing details on the qualifications of all new hires.
      2. Program Evaluation – how can you tell if the diversity initiatives are effective? Some common sense questions can be asked:
         a. Are the women and minorities reporting directly to senior managers?
         b. Do women and minorities have a fair share of jobs that are traditionally stepping stones to successful careers in the company?
         c. Do women and minorities have equal access to international assignments?
         d. Is the employer taking steps to ensure that female and minority candidates will be in the company's career development pipeline?
         e. Are turnover rates for female and minority managers the same or lower than those for white males?
         f. Do employees report that they perceive positive behavior changes as a result of diversity efforts?
         E. Reverse Discrimination – means discriminating against *non*minority applicants and employees. Many court cases have discussed these issues such as *Bakke v. Regents of the University of California* (1978).

Chapter Review

Chapter Section Summaries:

2-1. Several of the most important **equal employment opportunity laws became law in the period from 1964 to 1991**.
2-2. Equal employment law continues to evolve, with important **new legislation being enacted since 1990-1991**.
2-3. Employers use various **defenses against discrimination allegations**.
2-4. All managers play an important role **in the EEOC enforcement process**.
2-5. Managing diversity means maximizing diversity's potential benefits while minimizing the potential barriers.

Discussion Questions:

2-1. What important precedents were set by the Griggs v. Duke Power Company case? The Albemarle Paper Co. v. Moody?

Three crucial guidelines affecting equal employment legislation.
First, the Court ruled that the *discrimination does not have to be overt to be illegal.* The plaintiff does not have to show that the employer intentionally discriminated against the employee or applicant. Instead, the plaintiff just has to show that discrimination took place. Second, the Court held that an employment practice *must be job related* if it has an unequal impact on members of a **protected class.** Third, Chief Justice Burger's opinion placed the *burden of proof on the employer* to show that the hiring practice is job related.

In the *Albemarle* case, the Court provided more details on how employers could prove that tests or other screening tools relate to job performance. For example, the Court said that if an employer wants to test candidates for a job, then the employer should first clearly document and understand the job's duties and responsibilities. Furthermore, the job's performance standards should be clear and unambiguous. That way, the employer can identify which employees are performing better than others. The Court's ruling also established the EEOC (now Federal) Guidelines on validation as the procedures for validating employment practices.
This question can be assigned as a discussion question.

2-2. Explain each of the four examples of a bona fide occupational qualification.
Bona Fide Occupational Qualification (BFOQ) refer to requirements that an employee be of a certain religion, sex, or national origin where that is reasonably necessary to the organization's normal operation. Specified by the 1964 Civil Rights Act. For example, if a casting was hiring an actor for a male role, the BFOQ requirement would be that a male be hired. Likewise, if an orchestra needs a tuba player, those who do not play the tube would not be considered for the job. Students can work in small groups and provide examples of occupational qualifications al.

2-3. What is sexual harassment? How can an employee prove sexual harassment?

Sexual harassment is harassment on the basis of sex that has the purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment. An employee can prove sexual harassment in three main ways: 1) quid pro quo – prove that rejecting a supervisor's advances adversely affected tangible benefits; 2) hostile environment created by supervisors; and 3) hostile environment created by coworkers or nonemployees.

2-4. What is the difference between disparate treatment and disparate impact?

The main difference is one of intent. Disparate treatment means that there was an intent to treat different groups differently. Disparate impact does not require intent, but merely to show that an action has a greater adverse effect on one group than another.

Individual and Group Activities:

2-5. Working individually or in groups, respond to these three scenarios based on what you learned in Chapter 2. Under what conditions (if any) do you think the following constitute sexual harassment? (a) A female manager fires a male employee because he refuses her request for sexual favors. (b) A male manager refers to female employees as "sweetie" or "baby." (c) A female employee overhears two male employees exchanging sexually oriented jokes.

In answering the questions, the students should keep in mind the three main ways sexual harassment can be proved, as well as the steps the employee should take in alerting management.

2-6. Working individually or in groups, discuss how you would set up an affirmative action program.

It is important that students reach a decision of whether to use the good faith effort strategy or the quota strategy. Most experts would suggest the good faith effort strategy is the most legally acceptable approach. The following list of six actions should be demonstrated in the student plans: increasing the minority or female applicant flow; demonstrating top management support for the equal opportunity policy; demonstrating the equal opportunity commitment to the local community; keeping employees informed about the specifics of the affirmative action program; broadening the work skills of incumbent employees; and institutionalizing the equal employment policy to encourage supervisors' support of it.

2-7. Compare and contrast the issues presented in *Bakke* with more recent court rulings on affirmative action. Working individually or in groups, discuss the current direction of affirmative action.

The basic questions addressed in *Bakke* focused on when preferential treatment becomes discrimination and under what circumstances discrimination will be temporarily permitted.

Neither question was fully answered. Subsequent cases have continued to address these issues and clarify more specifically the scope and intent of affirmative action. For example, in the *Paradise* case, the court ruled that the courts can impose racial quotas to address the most serious cases of racial discrimination. In *Johnson*, the court ruled that the public and private employers may voluntarily adopt hiring and promotion goals to benefit minorities and women. The *Johnson* ruling may limit claims of reverse discrimination by white males.

2-8. Working individually or in groups, write a one-page paper entitled "What the Manager Should Know About How the EEOC Handles a Person's Discrimination Charge."

The students should include the following information in their paper. The EEOC can either accept the charge or refer it to the state or local agency. After it has been filed, the EEOC has 10 days to serve notice on the employer, and then investigate the charge to determine whether there is reasonable cause to believe it is true within 120 days. If charges are dismissed, the EEOC must issue the charging party a Notice of Right to Sue. The person then has 90 days to file suit on his/her own behalf. If the EEOC finds reasonable cause for the charge, it must attempt conciliation. If conciliation is not satisfactory, the EEOC can bring a civil suit in federal district court, or issue a Notice of Right to Sue to the person who filed the charge. Under Title VII, the EEOC has 30 days to work out a conciliation agreement between the parties before bringing suit. If the EEOC is unable to obtain an acceptable conciliation agreement, it may sue the employer in federal district court.

2-9. Explain the difference between affirmative action and equal employment opportunity.

Equal employment opportunity aims to ensure that anyone, regardless of race, color, sex, religion, national origin, or age has an equal chance for a job based on his or her qualifications. Affirmative action requires the employer to make an extra effort to hire and promote those in protected groups and includes specific actions designed to eliminate the present effects of past discrimination.

2-10. Assume you are the manager in a small restaurant; you are responsible for hiring employees, supervising them, and recommending them for promotion. Working individually or in groups, compile a list of potentially discriminatory management practices you should avoid.

Acceptable answers include the following:

Ensure that recruitment practices are non-discriminatory, and avoid word-of-mouth dissemination of information about job opportunities when the workforce is substantially white, or all members of some other class. Avoid giving false or misleading information to members of any group or failing to advise them of work opportunities. Avoid advertising classifications that specify gender or age unless it is a bona fide occupational qualification for the job.

Avoid asking pre-employment questions about an applicant's race, color, religion, sex, or national origin.

Do not deny a job to a disabled individual if the person is qualified and able to perform the essential functions of the job. Make reasonable accommodations for candidates that are otherwise qualified but unable to perform an essential function unless doing so would result in a hardship.

Apply tests and performance standards uniformly to all employees and job candidates. Avoid tests if they disproportionately screen out minorities or women and are not job related.

Do not give preference to relatives of current employees if your current employees are substantially non-minority.

Do not establish requirements for physical characteristics unless you can show they are job related.

Do not make pre-employment inquiries about a person's disability, but do ask questions about the person's ability to perform specific essential job functions.

Review job application forms, interview procedures, and job descriptions for illegal questions and statements. Check for questions about health, disabilities, medical histories, or previous workers' compensation claims.

Do not ask applicants whether they have ever been arrested or spent time in jail. However, you can ask about conviction records.

2-11. Appendix A and B at the end of this book list the knowledge someone studying for the HRCI (Appendix A) or SHRM (Appendix B) certification exam needs to have in each area of human resources management (such as in Strategic Management and Work-force Planning). In groups of several students, do four things: (1) review Appendix A and/or B; (2) identify the material in this chapter that relates to the Appendix A and/or B required knowledge lists; (3) write four multiple choice exam questions on this material that you believe would be suitable for inclusion in the HRCI exam and/or the SHRM exam; and (4) if time permits, have someone from your team post your team's questions in front of the class, so that students in all teams can answer the exam questions created by the other teams.

Students can work together is teams and present their multiple choice exam questions to the class.

Experiential Exercise: "Space Cadet" or Victim?

Purpose: The purpose of this exercise is to provide practice in analyzing and applying knowledge of equal opportunity legislation to a real problem.

Required Understanding: Be thoroughly familiar with the material presented in this chapter. In addition, read the preceding "space cadet" case on which this experiential exercise is based.

How to Set Up the Exercise/Instructions:

- Divide the class into groups.
- Each group should develop answers to the following questions:

2-12. Based on what you read in this chapter, on what legal basis could the 61-year-old California attorney claim he was a victim of discrimination?

2-13. On what laws and legal concepts did the employer apparently base its termination of this 61-year-old attorney?

2-14. Based on what laws or legal concepts could you take the position that it is legal to fire someone for poor performance even though there may be a discriminatory aspect to the termination? (This is not to say that there necessarily was such a discriminatory aspect with this case.)

2-15. If you were the judge called on to make a decision on this case, what would your decision be, and why?

The court's decision follows, so please do not read this until you've completed the exercise. In this case, the California State Appeals court held that "the only reasonable inference that can be drawn from the evidence is that [plaintiff] was terminated because he failed to competently perform his job of providing thorough, accurate, and courteous legal advice to hotline callers."

Application Case: Seeking Gender Equity at Starbucks

2-16. Do you agree that it is inequitable to offer the corporate workers better benefits then the store partners? Why? Is that what the law would seem to say?

If corporate workers have more skills, educational background, and experience than store partners, then there is a reason for them to have a higher salary and benefit package. If, however, both corporate workers and store partners have the same skills, educational background, and experience, they should get the same level of benefits according to the Equal Pay Act of 1963. This background information including job descriptions and candidate requirements is not given in the case.

2-17. What arguments would you make as Starbuck's CEO concerning why the current policy is fair?

It is not discriminatory to give some employees a higher level of benefits than others as long as the decision to give the additional benefits is not based on race, gender, religion, or age. For example, Starbuck's could give extra benefits based on seniority. It is also

important to note that the store partners do not consititute a protected class; persons, such as minorities and women are protected by equal opportunity laws, including Title VII.

2-18. How would you handle the situation if you were running a company **that was confronted by a shareholder making these demands?**

The shareholders feel that Starbucks' reputation will be tarnished because the company is on record as saying that it treats corporate and retail partners the same. The shareholders feel that Starbucks should "practice what it preaches." So, while legally Starbucks is in compliance with the EEOC, it would be far better off if it could extend the maternity leave to all employees. Then Starbucks could rightfully claim to be a family-friendly employer who takes work-life balance seriously. This attitude would greatly enhance the Starbucks brand.

Continuing Case: Carter Cleaning Company – A Question of Discrimination

2-19. Is it true, as Jack Carter claims, that "virtually all of our workers are women or minorities anyway, so no one can come in here and accuse us of being discriminatory"?

This is not true at all. Employers can be accused of discriminatory practices at any time. In this case, female applicants were being asked questions about childcare that males were not being asked; minority applicants were being asked questions about arrest records and credit histories that non-minorities were not. In addition, the reports of sexual advances towards women by a store manager and an older employee's complaint that he is paid less than younger employees for performing the same job all raise serious issues in terms of discriminatory employment practices. Potential charges include Title VII violations, Equal Pay Act violations, age discrimination, sexual harassment, and disparate treatment.

2-20. How should Jennifer and her company address the sexual harassment charges and problems?

The first step would be to document the complaint and initiate an investigation. If the investigation finds that sexual harassment occurred, then take the appropriate corrective action which could include discipline up to and including discharge. In addition, the company should develop a strong policy statement and conduct training with all managers.

2-21. How should she and her company address the possible problems of age discrimination?

The company should review the compensation structure and pay rates to determine whether there is discrimination in their pay system with regard to older workers being paid less than younger workers for performing the same work. If there are significant

differences, then adjustments should be made to the pay system in order to rectify the problem.

2-22. Given the fact that each of its stores has only a handful of employees, is her company in fact covered by equal rights legislation?

Yes – the EEOC enforces equal employment compliance against all but the very smallest of employers. All employees including part-time and temporary workers are counted for purposes of determining whether an employer has a sufficient number of employees. State and local laws prohibit discrimination in most cases where federal legislation does not apply.

2-23. And finally, aside from the specific problems, what other personnel management matters (application forms, training, and so on) have to be reviewed given the need to bring them into compliance with equal rights laws?

The company should do several things:

1. Develop an employee handbook that contains policy statements about equal employment opportunity, sexual harassment, and other issues.
2. Develop an employment application that is free from discriminatory questions, as well as a standard interview guide to ensure consistency of "legal" questions from candidate to candidate.
3. Conduct supervisory/management training to ensure that all managers are educated and aware of their responsibilities under EEO laws and regulations.
4. Develop and implement a complaint procedure and establish a management response system that includes an immediate reaction and investigation by senior management.

Key Terms:

Title VII of the 1964 Civil Rights Act – The section of the act that says an employer cannot discriminate on the basis of race, religion, sex, or national origin with respect to employment.

Equal Employment Opportunity Commission (EEOC) – The commission, created by Title VII, empowered to investigate job discrimination complaints and sue on behalf of complainants.

Affirmative Action – Steps that are taken for the purpose of eliminating the present effects of past discrimination.

Office of Federal Contract Compliance Programs (OFCCP) – This office is responsible for implementing the executive orders and ensuring compliance of federal contractors.

Equal Pay Act of 1963 – The act requiring equal pay for equal work, regardless of sex.

Age Discrimination in Employment Act of 1967 (ADEA) – The act prohibiting arbitrary age discrimination and specifically protecting individuals over 40 years old.

Vocational Rehabilitation Act of 1973 – The act requiring certain federal contractors to take affirmative action for disabled persons.

Pregnancy Discrimination Act – An amendment to Title VII of the Civil Rights Act that prohibits sex discrimination based on "pregnancy, childbirth, or related medical conditions."

Uniform Guidelines – Guidelines issued by federal agencies charged with ensuring compliance with equal employment federal legislation explaining recommended employer procedures in detail.

Protected Class – Persons, such as minorities and women, protected by equal opportunity laws, including Title VII.

Civil Rights Act of 1991 (CRA 1991) – The act that places the burden of proof back on employers and permits compensatory and punitive damages.

"Mixed Motive" Case – A discrimination allegation case in which the employer argues that the employment action taken was motivated not by discrimination, but by some non-discriminatory reason such as ineffective performance.

Americans with Disabilities Act (ADA) – The act requiring employers to make reasonable accommodation for disabled employees; it prohibits discrimination against disabled persons.

Qualified Individuals – Under ADA, those who can carry out the essential functions of the job.

Sexual Harassment – Harassment on the basis of sex that has the purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

Federal Violence Against Women Act of 1994 – The act provides that a person who commits a crime of violence motivated by gender shall be liable to the party injured.

Adverse Impact – The overall impact of employer practices that result in significantly higher percentages of members of minorities and other protected groups being rejected for employment, placement, or promotion.

Disparate Rejection Rates – A test for adverse impact in which it can be demonstrated that there is a discrepancy between rates of rejection of members of a protected group and of others.

4/5ths Rule – Federal agency rule that a minority selection rate less than 80% (4/5ths) of that for the group with the highest rate is evidence of adverse impact.

Restricted Policy – Another test for adverse impact, involving demonstration that an employer's hiring practices exclude a protected group, whether intentionally or not.

Bona Fide Occupational Qualification (BFOQ) – Requirements that an employee be of a certain religion, sex, or national origin where that is reasonably necessary to the organization's normal operation. Specified by the 1964 Civil Rights Act.

Alternative Dispute Resolution or ADR Program – Grievance procedure that provides for binding arbitration as the last step.

Diversity – The variety or multiplicity of demographic features that characterize a company's workforce, particularly in terms of race, sex, culture, national origin, handicap, age, and religion.

Sterotyping – Ascribing specific behavioral traits to individuals based on their apparent membership in a group.

Gender-Role Stereotypes – The tendency to associate women with certain (frequently non-managerial) jobs.

Discrimination – Taking specific actions toward or against a person based on the person's group.

Tokenism – When a company appoints a small group of women or minorities to high profile positions, rather than more aggressively seeking full representation for that group.

Ethnocentrism – A tendency to view members of other social groups less favorable than members of one's own group.

Managing Diversity – Maximizing diversity's potential benefits while minimizing its potential barriers.

Good Faith Effort Strategy – An affirmative action strategy that emphasizes identifying and eliminating the obstacles to hiring and promoting women and minorities, and increasing the minority or female applicant flow.

Reverse Discrimination – Claim that, due to affirmative action quota systems, white males are discriminated against.